

### **Remarks**

Claims 1, 4-14 and 21-25 were pending. Applicants have canceled claim 14 without prejudice to Applicants' right to pursue its subject matter in the present application and in related applications.

Applicants have amended claims 1 and 21 to delete references to asthma.

Applicants submit these amendments introduce no new matter into the application.

Upon entry of the present amendment, claims 1, 4-13 and 21-25 will be pending and presented for examination.

### **Election/Restrictions**

The Office action alleges that claims 23 and 25 are drawn to non-elected inventions. Applicants submit that Species C, lysine, is readable upon claim 23. Claim 23, therefore, should not be withdrawn from examination.

### **Information Disclosure Statement**

The Office action states that, at page 3, that "the listing of references in the Search Report is not considered to be an information disclosure statement (IDS) complying with 37 CFR 1.98."

Applicants have never argued that the International Search Report (ISR) listed on the information disclosure statement filed April 15, 2005, is, itself, an IDS. Rather, the ISR was listed on an IDS. Applicants are entitled to have the ISR considered as information submitted to the USPTO on an IDS complying with 37 C.F.R. §§ 1.97 and 1.98.

The Office action also states that "[t]herefore, the references cited in the Search Report have not been considered." Actually, it appears that references cited in the Search Report have indeed been considered. For example, PCT publications naming, as first inventors, Rothenberg or Ochoa are listed both on the ISR and, independently, on the IDS of April 15, 2005; the Examiner has initialed the IDS by the citations of those publications, indicating that the publications have been reviewed and considered; and the Examiner has applied the publications

against the claims in the most recent Office action. Applicants assume that the Examiner means merely that any references listed solely in the ISR and not also, separately in the IDS have not been considered. Applicants invite the Examiner to clarify this point in the next action.

As the ISR was properly cited in the IDS of April 15, 2005, in a manner complying with 37 C.F.R. § 1.98, Applicants respectfully repeat their request that the Examiner indicate he has considered the ISR.

Rejections under 35 U.S.C. § 102 based on U.S. Patent Application Publication No. US 2004/0057926 ("Ochoa")

Claims 21, 22 and 24 stand rejected as allegedly anticipated by Ochoa. Applicants have amended claim 1 to recite a method comprising administering an agent to a mammal which has chronic obstructive pulmonary disease. Applicants request reconsideration and withdrawal of the rejections.

Claims 21, 22 and 24 are entitled to the priority claim of March 4, 2003. Applicants submit that Ochoa is not available as a prior art reference against new claims 21-25 earlier than its actual filing date of March 12, 2003. Ochoa's priority document discusses putative treatments for several diseases, but chronic obstructive pulmonary disease is not among them.. Ochoa's priority document does not teach administering an agent to a mammal which has chronic obstructive pulmonary disease. Ochoa therefore cannot anticipate claim 21, 22 or 24.

The Office action asserts that paragraph [0006] of Ochoa's priority document teaches treating disease where there is chronic inflammation such as chronic obstructive pulmonary disease.

Applicants disagree.

Paragraph [0006] is in the section of Ochoa's priority document entitled "BACKGROUND OF THE INVENTION." The paragraph identifies chronic obstructive pulmonary disease among a variety of other diseases, such as emphysema, as diseases where there is "chronic inflammation." Nowhere does Ochoa's priority document teach administering an agent to a mammal which has chronic obstructive pulmonary disease. Ochoa's priority

document makes no mention of the possibility of treating pulmonary diseases such as emphysema or chronic obstructive pulmonary disease. Therefore, Ochoa's priority document cannot have taught administering an agent such as lysine (the elected species) to a patient having chronic obstructive pulmonary disease.

Because Ochoa does not provide an earlier disclosure of the claimed invention, Ochoa cannot anticipate the claimed invention under 35 U.S.C. § 102.

Applicants therefore respectfully request reconsideration and withdrawal of the rejections.

*Rejections under 35 U.S.C. § 102 based on U.S. Patent Application Publication No. US 2003/0166562 ("Rothenberg")*

Claims 1, 4, 6, 8, 12-14, 21, 22 and 24 stand rejected as allegedly anticipated by Rothenberg. Applicants have canceled claim 14 without prejudice and have amended claims 1 and 21 to delete references to asthma. As amended, claim 1 relates to a method comprising administering a therapeutically effective amount of an agent to a mammal which has chronic airway remodeling. Rothenberg does not teach administration to a mammal with chronic airway remodeling and therefore cannot anticipate the invention of independent claim 1, or of any of claims 4, 6, 8, 12, 13, or 14, each of which depend directly or indirectly from claim 1.

As amended, claim 21 relates to a method comprising administering a therapeutically effective amount of an agent to a mammal with chronic obstructive pulmonary disease. Rothenberg does not teach administration to a mammal with chronic obstructive pulmonary disease and therefore cannot anticipate the invention of independent claim 21, or of claim 22 or 24, each of which depend from claim 21.

Applicants respectfully request reconsideration and withdrawal of the rejections.

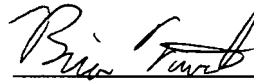
*Rejections under 35 U.S.C. § 103 over Rothenberg in view of Hannon (2002) Nature 418:244-251 ("Hannon")*

Claims 1, 8 and 10 stand rejected under 35 U.S.C. § 103 as allegedly unpatentable over Rothenberg in view of Hannon. Applicants have amended claim 1 to recite a method comprising

administering an agent to a mammal which has chronic airway remodeling. Neither Rothenberg nor Hannon teaches or suggests administering an agent to a mammal which has chronic airway remodeling. Accordingly, even in combination, Rothenberg and Hannon cannot render obvious claim 1, 8, or 10.

Applicants respectfully request reconsideration and withdrawal of the rejections.

Respectfully submitted,



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